

Senate, No. 2232

[Senate, December 17, 2009 – New Draft reported by the committee on Municipalities and Regional Government for Senate, No. 2224]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND NINE

AN ACT TO MODIFY THE LOWELL ARENA AND CIVIC STADIUM COMMISSION TO THE CIVIC STADIUM COMMISSION AND TO TRANSFER THE TSONGAS ARENA FROM THE CITY OF LOWELL TO THE UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

Whereas, the deferred operation of this act would tend to defeat its purposes, which is to transfer forthwith the Tsongas Arena and the land upon which it is located from the city of Lowell to the University of Massachusetts Building Authority, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

1 SECTION 1. Chapter 325 of the Acts of 1994, amended by chapter 79 of the acts of 1995, and
2 further amended by chapter 205 of the acts of 1996, is hereby repealed.

3 SECTION 2. The Lowell Arena and Civic Stadium Commission shall be renamed the Lowell
4 Civic Stadium Commission, hereinafter called the commission, for the purpose of operating and
5 maintaining, the civic stadium.

6 SECTION 3. (a) The commission shall consist of seven members, residents of the city as herein

7 provided, four of whom shall be appointed by the city manager with the approval of the city council and

8 three of whom shall be appointed by the chancellor of the University of Massachusetts at Lowell,

9 hereinafter called the university, in accordance with the procedures set forth in this act. A record of such

10 appointments by the city and as designated in writing by the university shall be filed with the city clerk

11 and thereupon be effective. The chairperson of the commission shall be designated by the city manager.

12 (b) The members of the commission appointed by the university, shall either be residents of the

13 city or officers or employees of the university. A vacancy in the commission shall be filled through the

14 procedures set forth in paragraph (a). Any member of the commission appointed by the university may

15 vote or act on any matter concerning or related to the university brought before the commission.

16 (c) The members of the commission shall serve for terms of five years unless sooner removed;

17 provided, however, that two of the initial appointees of the chancellor of university shall serve for two

18 years, and one shall serve for three years, the term of each to be designated by the chancellor at the time

19 of appointment; the remaining initial appointees of the city shall serve for terms of one, two, four, and

20 five years respectively, the term of each to be designated by the city manager at the time of appointment.

21 Members, unless sooner removed, shall serve until the appointment of their successors. Vacancies other

22 than by reason of expiration of a term shall be filled by appointment by the appropriate appointing

23 authority for the balance of the unexpired term. A member of the commission may be removed for cause

24 for misfeasance, malfeasance or wilful neglect of duty by a unanimous vote of each, of the city, acting

25 through the city council, and the university, acting through the chancellor, who may appoint a designee

26 for this purpose, pursuant to reasonable notice to the member in question which shall include a statement

27 of facts forming the basis for consideration of removal, and a public hearing conducted before the

28 council and the university representative, unless such hearing is expressly waived by the member in

29 question in writing. Removal for cause may be initiated by either the city or the university.

30 (d) The commission shall adopt by-laws, rules and regulations, which are consistent with the
31 provisions hereof or of any applicable statute or ordinance, for conducting its business and meetings and
32 otherwise carrying out, the purpose of this act. Four members of the commission shall constitute a
33 quorum and the affirmative vote of the majority shall be necessary and shall suffice for any action taken
34 by the commission including the adoption of such by-laws, rules and regulations.

35 (e) Members of the commission shall serve without compensation, but shall be allowed their
36 reasonable and necessary expenses incurred in the performance of their duties as such members.

37 (f) Notwithstanding any other provision hereof, upon the effective date of this act the then
38 serving members of the Lowell Arena and Civic Stadium Commission shall continue in office as the
39 members of the Lowell Civic Stadium Commission described in this Section 3, and their respective
40 terms as members of the civic stadium commission shall not be modified.

41 SECTION 4. (a) The commission, in cooperation with federal, state, municipal or private
42 agencies or persons, natural or corporate, including, without limitation, the university, is hereby
43 authorized for and on behalf of the city to plan, design, locate, acquire property, construct, equip,
44 furnish, alter, enlarge and repair structures and facilities of the civic stadium, whenever and to such
45 extent that the commission deems such facilities to be necessary or desirable.

46 (b) Notwithstanding any other provision hereof to the contrary, the commission shall take no
47 action described in this section without the approval of the city council of the city in each instance upon
48 written request of the city council by the commission: (i) adoption of annual capital and annual operating
49 budgets, (ii) the acquisition by purchase or lease of real property, (iii) the disposition of real property,
50 and (iv) the exercise of eminent domain.

51 SECTION 5. (a) The commission is hereby authorized to acquire in the name and on behalf of
52 the city for the purposes of this act private or public, real or personal property rights above, at or below
53 the surface of the earth which it deems necessary or desirable for the civic stadium by purchase, gift,

54 lease, bequest, devise or grant, and the city may transfer to the jurisdiction of the commission for such
55 purpose any such property acquired by the city by purchase, gift, lease, bequest, devise, grant or by the
56 exercise of eminent domain under any provision of law. Wherever possible and practicable, real property
57 acquired under the provision of this act shall be acquired in fee simple.

58 (b) The commission, may sell, lease, exchange, demolish or otherwise dispose of property and
59 property rights acquired under this act if, in so doing, it deems that the interests of the city will be best
60 served and that the same are no longer needed for purposes of the civic stadium.

61 Section sixteen of chapter thirty B of the General Laws shall not apply to this section.

62 SECTION 6. For the purposes of making surveys, planning, acquiring land for, erecting,
63 equipping of the civic stadium, the city, acting by and through the commission, is hereby authorized to
64 accept and use such federal, commonwealth and university funds, grants, appropriations, credits and
65 benefits as may now or hereafter be available for the same including, without limitation, any funds
66 available to the city or the commission in accordance with chapter four hundred and eighty-six of the
67 acts of nineteen hundred and eighty and to secure the benefits in regard to the civic stadium of the
68 applicable provisions of federal or state law or that which may be restricted by referendum for initial
69 construction.

70 SECTION 7. Notwithstanding the provisions of any general or special law or ordinance to the
71 contrary, the commission for and on behalf of the city is hereby authorized and empowered:

72 (a) To maintain, operate, insure, promote, repair and improve a civic stadium for such uses as are
73 provided in this act.

74 (b) To provide through employees of the city under the commission's supervision or by the grant
75 of one or more contracts or concessions to the university or to private persons or entities for the

76 furnishing of services and materials for the accommodation of persons admitted to or using the civic
77 stadium or any part, facility or function thereof.

78 (c) To establish rules, regulations and policies, and fix penalties for violations thereof, for the
79 use and occupancy of the civic stadium in accordance with the purposes provided for in this act and to
80 revise the same from time to time. Penalties enforced or other damages recovered by judicial process or
81 otherwise shall be collected for the account of the city and paid over to the commission.

82 (d) To fix and revise from time to time and charge and collect fees, rates, rentals and other
83 charges for admission to, or the use or occupancy of the civic stadium or any part thereof, and for the
84 grant of concessions therein and for things furnished or services rendered by the commission or by the
85 university or any other person holding a concession from the commission, whether the facilities are
86 operated by the commission or under a contract or lease with the university or any other persons or
87 entities. The commission shall fix such fees, rates, rentals or other charges for the admission to or the use
88 and occupancy of the civic stadium under this act as in its judgment are best suited to insure maximum
89 income to meet the expenses of the commission as established in its annual budget and to provide such
90 facilities at reasonably low cost. The fees, rates, rentals and other charges fixed by the commission shall
91 not be subject to supervision by or regulation of any department, division, commission, board, bureau or
92 agency of the commonwealth or of the city except as otherwise provided herein.

93 (e) Notwithstanding the provisions of any general or special law to the contrary, the University
94 of Massachusetts shall not be required to pay a fee or charge of any kind for the use of the civic stadium,
95 but, shall be responsible for its own costs.

96 (f) To contract with the university and any other persons or entities, public or private, with
97 respect to the use and occupancy by the university or such persons or entities by lease, rental or
98 otherwise, of all or any portion of the civic stadium under such terms and conditions, for such fees,
99 rentals or other charges, and for such period, not exceeding ten years, as the commission shall deem in

100 the best interest of the city, except that a contract with the university for university use may be for a
101 period in excess of ten years.

102 (g) Notwithstanding any general or special law to the contrary, the city and the commission are
103 hereby authorized to extend the current Baseball Stadium Lease Agreement with The University of
104 Massachusetts at Lowell, provided however, that any such contract shall not exceed a term of twenty-
105 five years. Further, the city and the commission are hereby authorized to enter into successor lease
106 agreements with The University of Massachusetts at Lowell for additional terms, provided however, that
107 any such contract shall not exceed a term of twenty-five years.

108 (h) To contract with a private professional manager or management firm, hereinafter called the
109 "general manager", which may be the same as the management agent for Lowell memorial auditorium,
110 wherein the commission may delegate such duties and authority to the general manager in regard to
111 supervising the design and construction and equipping, furnishing, repairing, operating and maintaining
112 the civic stadium as the commission deems proper; provided, however, that any such contract shall
113 provide for the termination of the same by the commission for cause and may provide for the termination
114 of the same at the convenience of the commission.

115 (i) To engage accounting, management, legal, financial, consulting and other professional
116 services, and to employ such other employees and agents, as may be necessary to carry out the
117 provisions and purposes of this act.

118 (j) Except as otherwise provided herein, all contracts made pursuant to this act shall be in
119 accordance with the provisions of section twenty-nine of chapter forty-three of the General Laws.

120 (k) Members of the commission shall not be employees of the city and the provisions of chapter
121 thirty-one of the General Laws shall not apply to any persons employed by the commission.

122 SECTION 8. (a) The commission is hereby authorized to maintain and operate the civic stadium
123 or to contract with the university or to contract with any person acting jointly with the university or any
124 other person, public or private, for the maintenance and operation of the civic stadium or any portion
125 thereof, provided, however, that any such contract shall not exceed a term of ten years and shall be
126 subject to the limitations and procedures established by section twenty-nine of chapter forty-three of the
127 General Laws and chapter thirty B of the General Laws.

128 (b) Any contract pursuant to paragraph (a) may provide for advance reservations of the civic
129 stadium shall be on such terms and conditions as the commission deems proper. Notwithstanding the
130 provisions of any general or special law or ordinance to the contrary, contracts executed pursuant to this
131 section shall be valid and binding on both parties thereto when executed by any such person and upon
132 approval by a majority of the members of the commission. Said commission's power to execute contracts
133 under this section may be delegated by it to the general manager of the civic stadium.

134 SECTION 9. (a) The commission shall have no independent authority to incur debt. All debt in
135 the form of notes or bonds, if any, incurred in connection with the civic stadium shall be debt of the city
136 and shall be incurred by the city in accordance with applicable laws and procedures and on such terms
137 and conditions as determined by the city from time to time.

138 (b) Subject to the approval of the finance advisory board if such board shall then be in existence,
139 the city, upon recommendation of the city manager and the approval of the city council, may appropriate
140 to the commission such funds as it deems necessary for the purposes of managing, operating, promoting,
141 maintaining, repairing and improving the civic stadium or any of its facilities. The provisions of chapter
142 four hundred and eighty-six of the acts of nineteen hundred and eighty, to the extent not inconsistent
143 with the provisions of this act, shall apply to the city and the commission acting under the provisions of
144 this act.

145 (c) Any receipts from the operation of the civic stadium shall be kept in a separate fund by the
146 city treasurer apart from any other money, funds, or other property of the city and may be used subject to
147 the recommendation of the city manager and the approval of the city council for the purpose of
148 managing, operating, promoting, maintaining, repairing and improving the civic stadium and for the
149 payment of bond and note indebtedness as provided in this act and for a capital reserve fund among other
150 things. The provisions of section fifty-three F ½ of chapter forty-four of the General Laws shall apply to
151 the civic stadium which shall be deemed to be an enterprise under said provisions.

152 SECTION 10. The commission shall prepare and submit to the city manager and city council an
153 annual report within three months of the end of the city's fiscal year.

154 SECTION 11. All existing contractual rights and obligations of the Lowell Arena and Civic
155 Stadium Commission with respect to the civic arena shall become the contractual rights and obligations
156 of the University of Massachusetts at Lowell on the effective date of this section.

157 SECTION 12. (a) Notwithstanding any limitation on the number of licenses which may
158 be issued under the provisions of section seventeen of chapter one hundred and thirty-eight of
159 the General Laws, the licensing commissioners of the City of Lowell may issue to the
160 University of Massachusetts Building Authority, the university, any non-profit supporting
161 organization of the university or to any other persons or entities operating the civic arena under
162 a contract with the Authority or the university, or who has been granted a concession by the
163 Authority or the university for the sale of food and alcoholic beverages, a license as a common
164 victualler to serve all alcoholic beverages to be drunk on the premises of the civic arena or any
165 part thereof and the provisions of sections twelve A and sixteen C of said chapter one hundred
166 and thirty-eight shall not apply to such premises. A licensee shall not be required by said
167 licensing board under the provisions of section twelve of said chapter one hundred and thirty-

168 eight to have the licensed premises open during any hours when there is no activity being
169 conducted in the civic arena nor shall the licensee be permitted to serve food or alcoholic
170 beverages to strangers, travelers or members of the general public who are not attending an
171 activity then being conducted in the civic arena.

172 (b) Notwithstanding any general or special law or ordinance to the contrary, said
173 licensing commissioners are authorized to issue to the Authority, the university, any non-profit
174 supporting organization of the university or to any other persons operating the civic arena under
175 a contract with the Authority or the university or who has been granted a concession by the
176 Authority or the university for the sale of food or beverages a common victualler's license for
177 the premises of the civic arena or any part thereof pursuant to section two of chapter one
178 hundred and forty of the General Laws and the provisions of section five of said chapter one
179 hundred and forty shall not apply to the license so issued.

180 (c) Notwithstanding any limitation on the number of licenses which may be issued
181 under the provisions of section seventeen of chapter one hundred and thirty-eight of the General
182 Laws, the licensing commissioners of the City of Lowell may issue to the university, any non-
183 profit supporting organization of the university or to any other persons or entities operating the
184 civic stadium under a contract with the city, or who has been granted a concession by the city
185 for the sale of food and alcoholic beverages, a license as a common victualler to serve all
186 alcoholic beverages to be drunk on the premises of the civic stadium or any part thereof and the
187 provisions of sections twelve A and sixteen C of said chapter one hundred and thirty-eight shall
188 not apply to such premises. A licensee shall not be required by said licensing board under the
189 provisions of section twelve of said chapter one hundred and thirty-eight to have the licensed
190 premises open during any hours when there is no activity being conducted in the civic stadium

191 nor shall the licensee be permitted to serve food or alcoholic beverages to strangers, travelers or
192 members of the general public who are not attending an activity then being conducted in the
193 civic stadium.

194 (d) Notwithstanding any general or special law or ordinance to the contrary, said
195 licensing commissioners are authorized to issue to the university, any non-profit supporting
196 organization of the university or to any other persons operating the civic stadium under a
197 contract with the city or who has been granted a concession by the city for the sale of food or
198 beverages a common victualler's license for the premises of the civic stadium or any part thereof
199 pursuant to section two of chapter one hundred and forty of the General Laws and the
200 provisions of section five of said chapter one hundred and forty shall not apply to the license so
201 issued.

202 (e) Any licenses issued under this section shall not be transferable to any other location
203 and such licenses shall be renewed annually subject to the provisions of chapter one hundred
204 and thirty-eight of the General Laws.

205 (f) Any license issued under this section shall expire and be returned by the licensee to
206 the licensing commissioner upon the termination of the licensee's lease or concession.

207 SECTION 13. This Act shall take effect on January 12, 2010. Notwithstanding the
208 foregoing, the contracts referred to in section 11 shall remain the contracts of the commission
209 until the recording with the Middlesex County North District Registry of Deeds of a deed to the
210 University of Massachusetts Building Authority of the Tsongas Arena and the land on which it
211 is located, which includes the land shown as Lot 5 and a portion of Lot 1 on a plan recorded
212 with the Registry as Plan 101 in Plan Book 205.